



Business, Transportation and  
Housing Agency

# Workers' Compensation and Disability Retirement within the CHP



M. L. Brown, Commissioner  
Revised February 9, 2005

Department of California Highway Patrol

Report to  
Business, Transportation and Housing Agency

Workers' Compensation  
and  
Disability Retirement within the CHP

*M. L. Brown,*  
*Commissioner*

*Revised February 9, 2005*

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## Executive Summary

In September and October 2004, media coverage highlighted several recently retired California Highway Patrol (CHP) executives, each of whom retired on disability. The nature of their disability claims, and in some instances, the nature of their subsequent employment after leaving the CHP, raised questions about their disability claims and the appropriateness of a disability retirement.

While the implications left by this coverage raised important concerns, they must be separated from the many claims filed by employees who suffer legitimate life-altering injuries and who are reluctantly forced to leave a career they love. Still, the subject matter and the case examples cited in these articles demanded action by the Department.

The financial impact of workers' compensation cost to the Department is significant; it approximates \$67.8 million per year<sup>1</sup>. Moreover, beyond the financial burden, injuries take our employees off the road, which ultimately can affect our ability to provide safety and service to the public. (*Revised February 2005.*)

The State's workers' compensation and disability retirement systems are highly regulated. For example, the State's workers' compensation system is directed by laws contained in the Labor Code and precedent-setting case decisions by the Workers' Compensation Appeals Board (WCAB). Additionally, the State's disability retirement system is directed by the Public Employees' Retirement Law. Specified laws in both systems determine an injured employee's entitlement to benefit payments.

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<sup>1</sup> It is important to note that the death benefits that employees' dependents receive can be a significant contributor to the CHP's total annual workers' compensation expenditures. While death benefits are difficult to quantify at any given point in time, the Department will attempt to identify these costs in the near future.



Despite significant reforms since its implementation, the basic principle of the workers' compensation system has remained the same: employers provide protection for work-related injuries as a cost of doing business, and benefits are afforded, within defined limits, regardless of the fault of any person or entity (the so-called "No Fault" system). In turn, employers are provided with protection against negligence suits based on industrial injuries.

The CHP's role in the workers' compensation and disability retirement processes involves active participation by all managers and supervisors in managing injury and illness claims. The Department strives to demonstrate a nexus between the claimed injury and the job. We also have an investigative role in those cases where there may be some suspicion about the truthfulness of a claim. It is important to note, however, that *the CHP has no authority to make determinations on the injured employee's eligibility for workers' compensation or disability retirement benefits*. Instead, the Department's principle role in these processes is to ensure proper and timely reporting of all injury claims, that necessary medical treatment is provided, and that compensation payments are made to eligible employees.

The CHP has detailed policies and procedures in place that, in combination with State law, direct the Department's participation in the workers' compensation and disability retirement processes. Although the CHP's role involves active participation by managers and supervisors in managing injury and illness claims, the final resolution of an injury claim is determined by the workers' compensation adjusting agent, the State Compensation Insurance Fund (SCIF), the WCAB, and the California Public Employees Retirement System (CalPERS), respectively.

## **Costs and Trends**

To obtain an understanding of the impact of workers' compensation costs, we examined current costs and trends. The CHP has experienced significant



increases in its total workers' compensation costs over the past years. In fiscal year 1995/96, the CHP paid a total of \$36,222,283 (or 7.68 percent of its payroll) in workers' compensation costs. In fiscal year 2003/04, the CHP's workers' compensation costs increased to a total of \$67,804,243 (or 9.97 percent of its total payroll). The rise in costs can be attributed, in large part, to skyrocketing medical costs, inflation, litigation, SCIF case management fees, and an expansion of the types of injuries that are considered to be "presumptive." (*Revised February 2005.*)

The concern over workers' compensation is not new to this Department. Over the years, the Department has been involved with several ambitious efforts to address this multi-faceted issue, with differing levels of success.

In 1992, a comprehensive audit of the Department's management of workers' compensation claims and disability retirements was conducted. As a result of the audit, several legislative recommendations were proposed to improve the system and discourage fraudulent industrial disability retirements (IDRs). However, none of the recommendations were adopted by the Legislature. Then, on March 16, 1996, Commissioner D. O. Helmick testified before a Senate budget subcommittee and provided four legislative proposals related to curbing workers' compensation abuse. Again, none of the proposals were adopted by the Legislature (see Annex C in the full report).

## ***Review and Findings***

With a newly appointed Commissioner, the Department made a commitment to delve into the Department's workers' compensation and disability retirement systems and produce a report describing the Department's findings. Upon taking office, CHP senior staff (the Commissioner, Deputy Chiefs, Assistant Chiefs, Assistant Commissioners, and Deputy Commissioner) immediately re-established and expanded the CHP's Workers' Compensation Fraud Unit (WCFU).



Additionally, on September 18, 2004, an ad hoc workers' compensation fraud audit task force was formed to evaluate all cases from January 1, 2000, through June 30, 2004, in which an IDR was granted to a uniformed member of the Department. The task force identified 603 cases that were covered by this time period.

Three categories were established that allowed each case to be evaluated by a standardized and consistent set of factors that have historically been indicators of potential fraud. The categories are as follows:

- Category I: Employees facing disciplinary action at the time of the IDR; multiple claims filed within a 30-day period; the mechanism of injury was inconsistent with the claimed severity; relation of injury to job is unclear; there are discrepancies in how employee filed claim; or, the claim marked "Questionable" by employee's commander.  
(Note: "presumptive injuries" were not excluded from this category if other indicators of possible abuse were present.)
- Category II: No witnesses to the injury; the injury was reported late or the reporting employee was 48 years old or older; cumulative injuries, the employee's assignment, and the type of injury were inconsistent; details of the injury as provided by the employee were vague or unverifiable; or, there appear to be violations of HPM 10.7 procedures for handling claims.
- Category III: The injury was substantiated by a doctor and considered presumptive by law (except back injuries), or the injury was obviously valid (severe head injury, missing extremity, death, etc.).





The task force's findings cover several areas, including: an overview of IDRs by rank and other demographic criteria; identified cases that will be forwarded to CalPERS for additional review; identified cases that will be reopened and investigated by the Department; and a large quantity of statistical data to give an overall perspective of the current workers' compensation situation within the Department.

A total of 35 cases have been identified as requiring further direct investigation. Of these, 15 cases have indicators of potential abuse and are being investigated further, some of which could result in the Department seeking criminal prosecution. Since these are potentially active criminal investigations, no additional identifying information regarding these cases will be presented within this report.

The remaining 20 cases are being forwarded to CalPERS, accompanied by the analysis of each case detailing what fraud indicators were uncovered. The transfer was necessary because CalPERS has been reluctant to permit departmental investigators to examine case files due to legal and privacy issues, which the Department is attempting to resolve.

### ***Actions Taken***

- We have reinstituted the WCFU that will report directly to the Commissioner's Office. All CHP 121 forms (Report of Employee Injury/Illness) will be forwarded to this unit by local commanders for investigation and possible prosecution whenever indicators of possible fraud exist. The unit will work closely with Disability and Retirement Section (DRS), SCIF, CalPERS, and local district attorneys to improve anti-fraud policies, procedures, and training, and will prepare cases for prosecution.



- We have placed a renewed emphasis on making injury and illness case management a command “top” priority. To help accomplish this, DRS staff will provide training to Division and command staff responsible for case management.
- We have realigned the responsibilities of DRS. Over recent years, the DRS role has changed from a liaison between the Department, SCIF, and CalPERS to one of an employee advocate. With the recent workers’ compensation laws, DRS can now become more of an advocate to protect the fiscal integrity of the CHP, while still ensuring that appropriate benefits are provided to our employees.
- The WCFU, in conjunction with DRS, have been asked to develop procedures to review and track mandatory reinstatement requests for indicators of fraud.
- The Department has begun an audit to assess the current accuracy of SCIF’s billing process.
- Workers’ compensation case management strategies will be included in the CHP’s 2005 Strategic Plan.
- DRS personnel will begin attending Division Area Commanders Conferences in 2005 to provide training and present information on significant workers’ compensation cases.
- The Department will invite other involved agencies to participate on a committee to explore a wide range of solutions to the workers’ compensation and disability retirement problems.



## **Recommended Actions**

There are a number of recommendations which could serve to prevent and manage employee injuries, while reducing associated costs. In order to implement long-term solutions and modifications to the complex workers' compensation program, logistical assessments must be a consideration prior to moving forward. The Department, in the months ahead, will continue to implement and evaluate the following internal recommendations, taking into consideration issues such as Memoranda of Understanding, bargaining unit contracts, and critical public safety tasks. Also, in developing the following recommendations, the Department considered the efforts and recommendations contained in the recently released *California Performance Review* (see Annex I in the full report).

### **Internal CHP Actions**

1. Limited Duty Assignments. The use of limited duty assignments (with an appropriate medical release) for specified employees pending IDR is being reviewed for possible expansion. Often employees file for IDR while on paid medical leave (4800.5 time)<sup>2</sup>. Bringing these employees back to work and placing them on limited duty status would stop their entitlement to 4800.5 benefits, thereby reducing departmental costs for tax free disability payments. Then, once the employee's IDR is approved by CalPERS, the employee could be separated from the organization, bringing about additional savings to the Department in reduced 4800.5 benefit costs. We would also explore and implement a policy to articulate which assignments employees on limited duty could perform.

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<sup>2</sup> This refers to California Labor Code Section 4800.5, which provides full salary, tax free, for up to one year to CHP uniformed employees who are *temporarily* disabled as a result of an industrial injury.

2. Internal Approval Authority. The Department is evaluating its internal authority process for the settlement of workers' compensation claims. This lengthy internal process can cause problems with meeting the 10-business day approval requirement imposed by the State's Master Agreement.
3. Policy Compliance. Emphasis has begun, and will continue, for strict compliance and enforcement of departmental policies relative to completion of required injury documentation, and specifically the CHP 121D, Injury/Illness Status Report. Further, existing policy is being revised to require monthly reporting of injury status by commanders of their employees, inclusive of months when no employee is on injury status, otherwise known as "negative reports."
4. Consistent and Timely Division Review of Area Case Management Practices. The Commissioner's Office currently provides "Quarterly Reports of Open Workers' Claims" to each Division commander for their respective commands. The Department will now provide these reports on a monthly basis to improve management review and follow up. Further, a standard Division review protocol is being developed to ensure that local commands use their report to actively review injury claims on a monthly basis. Finally, this new process will include a comparison between the CHP 121D and the new monthly report of open injury claims to ensure compliance with case management policies.
5. Legal Counsel Position. The Department will explore the feasibility of a budget change proposal seeking a legal counsel position, designated as an expert in, and solely dedicated to, departmental cases related to workers' compensation, retirement, recruitment, and equal opportunity. Such a position would provide immediate access to, and timely review of workers' compensation matters that may be outside the technical expertise of current DRS staff.



6. DRS Database. A modified DRS database must be developed to include additional statistical information about workers' compensation claims and IDRs. Such a database should be easily navigable and include information which could serve as indicators of potential fraud. The database recently developed by the workers' compensation audit task force will be used as a starting point in the development of this new database. Information contained in these files will also be accessible to field commands upon request.
7. Workers' Compensation Fraud Unit Database. A more expansive, confidential database should also be created for the exclusive use of the Workers' Compensation Fraud Unit. This database will be utilized to conduct trend analyses, and to track fraud investigation cases from initial investigation to prosecution and/or adverse action.
8. Policy. Policy will be developed to provide further guidance for processing of "questionable" injury claims. Specifically, a policy will be provided on handling of claims that appear to be fraudulent.
9. Tipline/Website. The Department will explore the feasibility of establishing a toll free workers' compensation fraud reporting hotline for suspected criminal activity by workers' compensation claimants and/or disability retirees. The website could be utilized by both departmental employees and the public.
10. 14 Critical Tasks. The Department will re-evaluate the 14 critical tasks (otherwise known as "performance measures") required of all uniformed employees and make recommendations to the Commissioner as appropriate (see Annex J in the full report for a copy of these tasks).
11. Self Administration. The Department will explore the feasibility of administering its own workers' compensation claims, or replacing SCIF



with a private insurer. Such an evaluation will explore means of reducing current multi-million dollar annual costs for open injury claims. This recommendation would follow an assessment of recently enacted workers' compensation law. The threshold for this evaluation will be what is in the best interest of the state and taxpayers who fund workers' compensation costs. If this proposal is adopted, additional in-house legal counsel would be required.

12. Occupational Safety. The Department will task its Occupational Safety Committee to explore and recommend new workplace safety programs with a goal of substantially reducing injuries to employees and reducing associated costs.
13. Departmental Awareness Campaign. An in-house awareness campaign will be developed which emphasizes integrity and honesty relative to injury and workers' compensation claims. Awareness tools will include a means to express departmental values and expectations of employees with respect to this subject, the positive aspects of service retirement, the importance of proper case management, training of all employees, and wide dissemination of any departmental employee fraud cases.
14. Reclassifying Injured Employees. The Department is exploring the feasibility of reclassifying the duty position of permanently injured uniformed employees, with the intent of returning the employee to duty in a vacant non-peace officer role.
15. Special Handling of Retirements. The Department is developing policy to make clear that an employee's retirement eligibility shall not be considered when an adverse action, or separation due to injury, is being considered by the Department.

16. Amendment to HPM 10.2, *Internal Investigations*. Under the Peace Officers' Bill of Rights, the Department generally has one year to take final administrative action against a uniformed employee for acts of misconduct. The Government Code provides specified exceptions to this one-year period for complex investigations, workers' compensation fraud, and other criminal cases. For example, it extends the period to take adverse action against an employee to within three years of learning of the misconduct. The practical effect of the time limit is that the Department will likely be precluded from taking adverse action against an employee who retires before adverse action is taken, then reinstates several years later after the statute of limitations passes relative to "final administrative action." Although this happens infrequently, it nevertheless is a loophole in the system.

The Department's Internal Affairs Section will address the issue described above by developing policy to allow the retention of internal investigations in specific circumstances for longer than the standard five year retention period currently allowed. The period of retention should be commensurate with the employee's eligibility to return to state service and would be approved by the Office of the Commissioner. (*Revised February 2005.*)

### **Actions External to CHP**

Although the following recommendations appear beneficial, they are beyond the Department's purview and may require legislative amendments in order to enact the strategies which would reduce the cost associated with workers' compensation claims.



1. Amend Labor Code 4658.6. Amend Labor Code Section 4658.6 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability. (This recommendation is specific to CHP IDRs and was part of the CHP's recommended legislative changes in March 1996.)  
(Revised February 2005.)
2. Earnings Offset. Establish an earnings offset for IDR retirees employed outside CalPERS in an occupation requiring peace officer status, by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement (similar to Government Code Section 21300). (This recommendation is specific to the CHP and was part of the CHP's recommended legislative changes in March 1996.)
3. Presumptive Injuries. There must be a review of Labor Code Sections 3212 through 3213 to determine if the current list of presumptive injuries is tied to specific job-related injuries. An employee should not, for example, automatically qualify for a "presumption based" IDR if the medical review determines that the particular injury was unrelated to the employee's specific job duties. (This recommendation is specific to the CHP.)
4. Medical Evaluations. With respect to CalPERS, after an IDR is approved CalPERS has the responsibility to periodically review the current status of retirees. To accomplish this, CalPERS should periodically have independent medical evaluators re-evaluate, in a standardized format, the disability status of employees who are less than 50 years of age, which is the CHP's eligibility age for service retirement. This could initially be done on a trial basis to determine if this process is beneficial in identifying





disability retired employees whose medical status later improves to the point that they may be able to return to their CHP employment.

5. Amend Penal Code Section 1543(d): Penal Code Section 1543(d) should be amended to grant the CHP access to relevant medical records associated with workers' compensation and disability retirement cases that both SCIF and CalPERS have access to. (*Revised February 2005.*)

## **Conclusions**

The review of workers' compensation claims and IDR cases has yielded a list of problem areas that need to be addressed, both by the CHP and by others involved with these issues. To correct these discrepancies, a list of action steps has already been implemented. In addition, recommendations have been provided that apply both to the CHP and to the workers' compensation and IDR systems as a whole (which would have to be addressed by the Administration, Legislature, and other stakeholders).

As reflected in this report, we have taken an honest look at the numbers of industrial disability retirements; we have identified those that might be worthy of more detailed review; we have identified those that might be worthy of prosecution for fraud; and we have established a permanent workers' compensation fraud unit that will continue this initial phase of investigation and be ready to undertake a vigorous new investigative role for any new cases that may arise.



## Introduction

The workers' compensation and disability retirement programs that uniformed employees of the California Highway Patrol (CHP) have access to are the result of input from many interest groups. Employees, employee associations, legislators, the State Compensation Insurance Fund (SCIF), employees' attorneys, the medical profession, the California Public Employees Retirement System (CalPERS), the CHP, and others all have shared in shaping and crafting the current state of these vital programs. Despite the many hands involved with creating and operating these programs, their primary goal remains steadfast: providing benefits to public safety employees injured on the job and while they complete their rehabilitation; and, when the cumulative effect of a specific injury or injuries prevents them from performing their law enforcement duties, allows them to retire with specified benefits and compensation.

While the goals of the workers' compensation and disability retirement programs are laudable, they do not come cheaply. Employee safety has always been a top priority for the CHP, but accidents do happen and injuries do occur. The financial cost to the Department is significant; it approximates \$67.8 million per year (nearly 10 percent of the Department's payroll budget).<sup>1</sup> Moreover, beyond the financial burden, injuries take our employees off the road, which ultimately can affect our ability to provide safety and service to the public. Minimizing injuries, and exposure to possible injury, is a win-win-win situation for employees, the Department, and the public we serve, and one which we strive to maintain every day. *(Revised February 2005.)*

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<sup>1</sup> It is important to note that the death benefits that employees' dependents receive can be a significant contributor to the CHP's total annual workers' compensation expenditures. While death benefits are difficult to quantify at any given point in time, the Department will attempt to identify these costs in the near future.



The slice of the Department's budget dedicated to workers' compensation claims warrants a watchful eye by program personnel and ultimately by Executive Management. Our ongoing commitment is to minimize injuries to CHP employees; when injuries do occur, however, our obligation will be to ensure all appropriate benefits are accessed and received by those injured employees. At the same time, it is crucial that policies and procedures are in place and utilized to minimize the opportunity to take unfair advantage of the system or to commit outright fraud.

The issue of suspicious workers' compensation and disability retirement claims recently took on a new air of importance. In September 2004, media coverage focused on several recently retired CHP executives, each of whom retired on disability (see Annex A). The nature of their disability claim, and in some instances, the nature of their subsequent employment after leaving the CHP, raised questions about their disability claims and the appropriateness of a disability retirement. While the implications left by these articles raised serious questions they must be separated from the many claims filed by employees who suffer life-altering injuries and who are reluctantly forced to leave a career they love. Still, the subject matter and case examples cited in these articles demanded action by this Department.

The following report discusses information on several key topics, including: the history of the workers' compensation and disability retirement systems; the role of the CHP in these systems and the departmental policies and procedures that facilitate the Department's role; current trends in workers' compensation claim and retirement disability costs; and the Department's history in managing and investigating suspicious injury claims. In addition, and in direct response to the *Sacramento Bee* articles, the report also looks in detail at disability retirement claims filed between January 1, 2000, and June 30, 2004, in order to determine the legitimacy of those claims. Finally, the report concludes with suggested recommendations for improving the workers' compensation and



disability retirement systems, both from an internal departmental perspective, and externally.

The entire California Highway Patrol appreciates the Governor's confidence in allowing this Department to explore in detail these complex and vital programs. The employees of the CHP, both sworn and civilian, take great pride in the service they provide to the public. Any practice that casts doubt on our organizational values of respect for others, fairness, ethical practices, and equitable treatment for all, must be identified and eliminated. This report lays the foundation for restoring faith in an organization that is deserving of the public's trust. The Department stands ready to work with the Governor, the Legislature, other involved parties, and the people of California to ensure that in every possible case, benefits awarded are a direct result of bona fide on-the-job injuries.



## **Background**

### ***Workers' Compensation***

**T**o establish a foundation for the direction of analysis and recommendations, it will be useful to begin with a brief historical perspective. California's workers' compensation system was first implemented in 1911 with a voluntary plan for employers to provide compensation to employees injured on the job. In 1913, this plan was superseded by a compulsory plan that required all employers in the state to provide medical treatment and compensation payments to employees who suffer industrial injuries. Despite significant reforms since its implementation, the basic principle of the workers' compensation system has remained the same: employers provide protection as a cost of doing business, and benefits are afforded, within defined limits, regardless of the fault of any person or entity. In turn, employers are provided with protection against negligence suits based on industrial injuries.

The basic process for reporting and filing a claim for employees injured on the job is as follows: The employee reports the incident to the appropriate supervisor or manager; the supervisor/manager documents the injury; that documentation is sent to the particular entity that handles workers' compensation claims (for California state government, that entity is the State Compensation Insurance Fund, or SCIF); based on medical evaluations allowed under the Labor Code, SCIF reviews these evaluations to determine case eligibility and then provides the appropriate benefits; the employee is medically rehabilitated and returns to work or is medically determined to be unable to return to full duty and either demotes to a civilian position or pursues an industrial disability retirement (IDR).

Expansive legal precedent and legislative action have continued to enhance benefit provisions to certain groups of injured workers. For law enforcement personnel, these benefit enhancements have included tax-free salary continuation for temporarily disabled employees (“4800.5 time” for CHP employees and “4850 time” for local safety employees), as well as an increasing scope of injuries and illnesses *presumed* by law to be work related. The continued expansion of the state’s workers’ compensation system has led to rising costs for public safety employers, making those for California among the highest in the nation, while at the same time eroding somewhat the actual benefit to most injured employees.

### ***Industrial Disability Retirement***

Although technically not a workers’ compensation benefit, IDR constitutes what may be perceived as a benefit that is received by many state employees who are unable to return to work due to industrial injuries or illnesses. Historically, uniformed CHP employees and CHP Public Safety Dispatchers have been eligible for IDR if they become permanently disabled and unable to perform full duty as a result of an industrial injury. The IDR is an enhanced retirement benefit afforded to state and local safety personnel in recognition of the increased risk of injury inherent in their jobs. Recent efforts by employee unions have successfully resulted in IDR coverage for other civilian employee groups in the CHP, including Commercial Vehicle Inspection Specialists and School Pupil Transport Coordinators.

### ***Pertinent Statutes and Legal Requirements***

Since compliance with law will be assessed, pertinent statutes and requirements will first be described, with an emphasis on how they pertain to the CHP. The state’s workers’ compensation and disability retirement systems are highly regulated. The state’s workers’ compensation system is directed by laws



contained in the Labor Code and precedent-setting case decisions by the Workers' Compensation Appeals Board (WCAB). The state's disability retirement system is directed by Public Employees' Retirement Law. Specified laws in both systems determine an injured employee's entitlement to benefit payments.

For uniformed members of the CHP, workers' compensation law provides a number of unique benefits not afforded to the general public. These benefits include receiving full salary, tax-free, for up to one year for employees who are *temporarily* disabled as a result of industrial injury.<sup>4</sup> When an employee's injury is considered to be permanent and stationary, however, the employee will either return to full duty or be medically retired.

Additionally, a number of injuries or illnesses sustained by uniformed employees are *presumed* to arise out of their employment. This means that if any uniformed CHP employee suffers any one of the following conditions, they are automatically presumed to be job-related: heart trouble, pneumonia, hernia, tuberculosis, meningitis, cancer, and lower back impairment.

Uniformed CHP employees are subject to a "full duty" policy, as provided in Vehicle Code Section 2268(a). This section requires all uniformed members of the CHP to be capable at all times of performing the full range of official duties administered by the Commissioner, as well as those other critical duties that may be necessary for the preservation of life and property. This law also precludes assigning uniformed personnel to *permanent* limited duty. Provisions are in place, however, to allow a "temporarily" injured employee to perform in a limited duty capacity for up to six months to accommodate a recovery period. But, when a uniformed employee suffers a job-related injury and it is medically determined that the employee cannot perform the full spectrum of duties, the employee must either elect a medical demotion *to a civilian classification* or the Department is required to pursue that employee's IDR. If approved for IDR, the law requires

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<sup>4</sup> Also known as "4800 time" as referenced in Labor Code Section 4800.5.

that half of the employee's base salary be exempted from taxation for life. Additionally, the injury or injuries that required the IDR also result in permanent disability that impacts future employment for the employee. This permanent disability will result in a financial settlement paid by the CHP and is based upon the level of disability, as determined by a SCIF physician.

Further, if an employee is past the CHP's minimum retirement age of 50 and separates for IDR, the employee is entitled to his or her pension as well as the 50 percent tax-free benefit. While receiving an IDR, retirees are legally able to work in another occupation subject to limitations prescribed by the California Public Employees' Retirement System (CalPERS). The CHP has no regulatory authority over this issue.

### ***Full Range of Duties***

The Department has always required that uniformed members be capable of performing the full range of duties of a CHP officer. In 1978, in an effort to identify physical tasks critical to performing those duties, the State Personnel Board conducted a study, with CHP assistance, known as the Medical Standards Project. As a result of this study, the Department established an original list of 19 critical tasks required of all uniformed members in order to satisfy the full range of peace officer duties requirement.

For example, the State Incident Command System (ICS) places departmental senior management in a position of commanding all state and local public safety and fire resources occurring on state property, for day-to-day emergencies and those larger in scale. It is during these instances that CHP managers at all ranks of lieutenant, captain, assistant chief, and deputy chief are routinely called upon to manage local and state emergency responses, placing them in their traditional peace officer roles which expose them to potential injury and death. Further, day-to-day operations of uniformed managers assigned to





field offices and divisions expose them to daily interactions with the public, along with the inherent dangers, as these managers traverse the highways in uniform in both marked and unmarked vehicles. CHP captains, assistant chiefs, and deputy chiefs, often while en route to meetings or the office, assist disabled motorists or stop errant drivers. It is for these and many other typical law enforcement exposure reasons that the Legislature extended disability benefits to all uniformed ranks of the CHP, as well as many other public safety classifications.

### ***CHP's Role in Workers' Compensation/Disability Claim Processes***

The CHP's role in the workers' compensation and disability retirement processes involves active participation by all managers and supervisors in managing injury and illness claims. The Department strives to demonstrate a nexus between the claimed injury and the job. Also, when necessary, the Department has an investigative role in those cases where there may be some suspicion about the truthfulness of a claim. It is important to note, however, that ***the CHP has no authority to make determinations on the injured employee's eligibility for workers' compensation or disability retirement benefits.*** The Department's initial role in these processes is to ensure proper and timely reporting of all injury claims, that necessary medical treatment is provided, and that compensation payments are made to eligible employees.

CHP management is committed to assisting temporarily disabled employees in their return to work, if possible. The CHP's role continues until the final resolution of an injury claim, which can range anywhere from minor medical treatment and no time lost from work, to the disability retirement of an employee. Those determinations are made by the CHP's workers' compensation adjusting agent, SCIF, WCAB, and CalPERS, respectively. The CHP does, of course, work closely with those agencies by providing information that may help determine the appropriate workers' compensation benefit. The Department also helps ensure



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The CHP has volumes of policies and procedures in place that, in combination with state law, direct the Department's participation in the workers' compensation and disability retirement processes. These policies and procedures

are contained in Highway Patrol Manual (HPM) 10.7, *Injury and Illness Case Management*; the Master Agreement (MA) between the Department of Personnel Administration (DPA) and SCIF, which outlines responsibilities between these parties to provide workers' compensation benefits for state employees; Highway Patrol Guide (HPG) 22.4, *Commander's Desk Reference*; and, HPG 22.1, *Command Resources Management Guide*.

A review of HPM 10.7 outlined several policy and procedural requirements that commanders must follow for injury and illness case management. These requirements were included in HPM 10.7 to ensure departmental compliance with the California Labor Code and with the MA between the State of California and SCIF. The requirements in HPM 10.7 list timelines for completing and submitting mandatory claim forms (SCIF 3301, Employee Claim for Workers' Compensation), report of injury forms (CHP 121 form); describe procedures for marking the CHP 121 "questionable" for cases in which suspicion about a reported injury may be present; and, procedures for determining preventability and ongoing discussion with the employee about progression of the claim (CHP 121D form).

In addition to evaluating whether or not the practices involving claims followed the applicable policy and procedures, a review was conducted of the Department's practices against the policy and procedures in the MA between DPA and SCIF. The MA clearly delineates the requirements of all parties, and the Department is tasked with numerous duties under this agreement.

Sections 3, 5, 6, 7, and 8 of the SCIF MA each contain an itemized list of Department responsibilities. The commander and the two most experienced disability coordinators in the CHP's Disability and Retirement Section (DRS) were interviewed to assess CHP compliance with 33 Department responsibility statements that contain the directive "shall" or "will" in the MA. In most cases, information obtained by interview was also confirmed with documentation, such as memoranda, letters, e-mails, or logged case notes. In a few cases, however, no

documentation was available. For instance, one requirement prohibits subrogation against another State agency. In this case, compliance is not up to CHP, as the SCIF legal department makes the determination regarding who will be subrogated. Some areas of compliance were confirmed through telephone interviews with SCIF personnel.

### ***Compliance of CHP's Practices, Policies, and Procedures with Legislative Changes***

During the 2001-2004 period, there have been four major workers' compensation reform packages signed into law. Assembly Bill 749 took effect January 1, 2003; Assembly Bill 227 and Senate Bill 228 took effect January 1, 2004; and Senate Bill 899 took effect April 19, 2004. Cumulatively, these bills changed dozens of Insurance and Labor Code statutes as they related to the administration of workers' compensation claims. As the claims administrator for the Department's workers' compensation claims, SCIF has had to implement significant changes in how it reviews, monitors, and provides benefits relative to departmental claims. The changes in law did not affect how the CHP administers its injury management programs, nor departmental policies. However, previous CHP legislative proposals specific to CHP injury cases remain idle. (*Revised February 2005.*)



## What's Been Done

The concern over workers' compensation and IDRs is not new to this department. Rising medical and associated workers' compensation administrative costs have been a focus of CHP management for many years. The Department has been involved with several ambitious efforts to address this pervasive issue, with differing levels of success. Some of the more aggressive responses are described below.

### ***Workers' Compensation Program Audit***

In 1992, CHP Executive Management noted that workers' compensation costs had increased from \$14.7 million in 1985 to nearly \$30 million in 1991. The total costs of the increasing workers' compensation claims and payments under the provision of Section 4800 of the California Labor Code were approaching five percent of the Department's total budget. In response to this growing problem, a comprehensive audit of the Department's management of workers' compensation claims and disability retirements was ordered in 1992. The emphasis of the review was to examine the effectiveness and efficiency of the Department's policies and procedures and make recommendations when deficiencies were noted (see Annex B). *(Revised February 2005.)*

After an extensive review of these programs, the audit panel made a total of 48 specific recommendations ranging from adding analyst positions to far-reaching statutory changes. Many of these recommendations were implemented; some were not for a variety of reasons. The status and history of the report recommendations are contained in Annex C.



## **Workers' Compensation Fraud Unit**

In addition to the audit, the Investigation Unit of the Department's Bureau of Internal Affairs was expanded to include investigators specifically assigned to workers' compensation fraud. By early 1993, the unit had a total of four sergeants assigned exclusively to workers' compensation fraud investigation.

The team worked closely with the CHP's Disability and Retirement Unit, departmental field commands, and SCIF to identify cases with significant indicators of fraudulent activity. Investigations consisted of gathering documentary and testimonial evidence and, in many instances, conducting covert surveillance of suspect employees. Often, an investigation could require months of time and many personnel hours, including overtime, before being considered ready to present to a district attorney or to initiate adverse action against the employee. As such, only the cases that appeared to be the most likely candidates for prosecution or adverse action were considered for full investigation. Between 1992 and 1995, a total of 78 cases were investigated, 10 of which were referred to the local district attorney for criminal prosecution.

Knowledge of the formation of the Internal Affairs workers' compensation fraud team spread quickly throughout the Department. Given the complexity and large number of variables at work in the workers' compensation system, it is impossible to say with certainty that this single factor was the basis of any change; but, significant cost savings occurred shortly after the workers' compensation fraud team was formed. Based on the workers' compensation costs between fiscal years 1986/87 and 1992/93, the projected expenditures for fiscal year 1993/94 were approximately \$34 million. Instead, total expenditures for that fiscal year were just over \$28 million, a substantial 17 percent decrease. Workers' compensation expenditures climbed again, though, after 1993/94 and through 1995/96 (Figure 2). The ratio of IDRs as compared to total retirements, however, dropped precipitously from 1994 through 1996 (Figure 3).



Figure 2  
Worker's Compensation Financial Costs

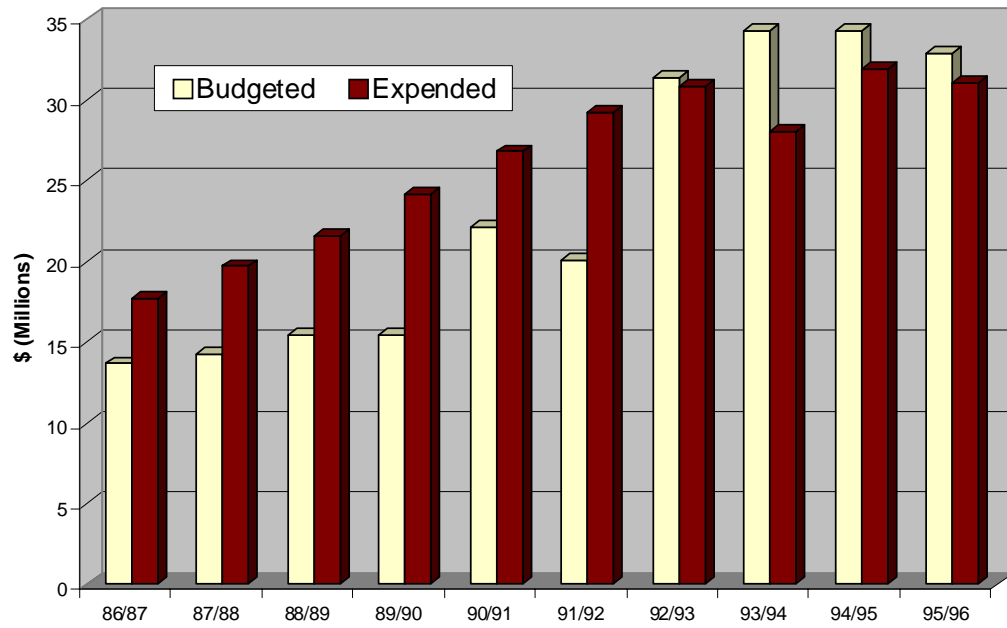
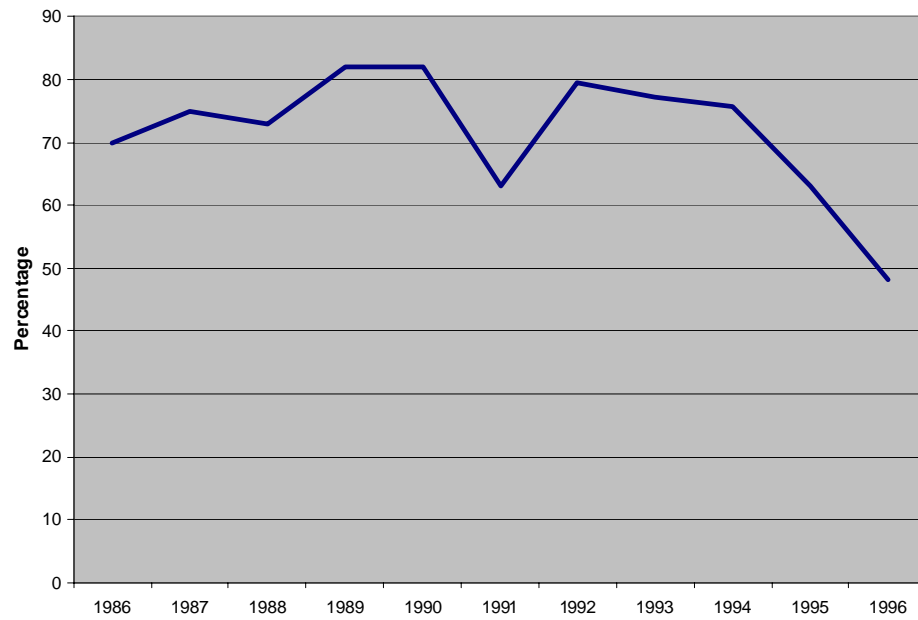


Figure 3  
Percentage of IDRs Compared to Total Retirements



By the beginning of 1996, the Internal Affairs workers' compensation fraud team was beginning to dissolve due to a number of factors, including:

1. Workers' compensation costs, fraudulent or otherwise, were deemed to be under control and the significant expense of maintaining the unit was more difficult to justify.
2. At the direction of CHP Executive Management, the Internal Affairs investigation unit was being assigned an increasing number of investigations for other state and local government agencies. These investigations were often quite complex and lengthy, requiring an ever larger portion of Internal Affairs resources, and tasking the workers' compensation fraud team with investigations unrelated to their primary mission.

For example, during the period 1996 through 1999, a total of 29 total workers' compensation fraud cases were reviewed or investigated, as compared to a total of 78 cases during the previous four years.

An additional factor contributing to the fraud team's demise was the rotation of experienced personnel out of the unit. As team members promoted or left at the end of their headquarters commitment, the relative paucity of workers' compensation cases being investigated meant replacement personnel were unable to gain the knowledge and experience needed to be truly effective workers' compensation fraud investigators.

### ***Proposed Legislation***

The Legislative Analyst's Office analysis of the 1992/93 Budget recommended that the Legislature adopt supplemental report language directing the CHP to report on specific methods it has identified to control workers' compensation program costs and to reduce the incidence of industrial disability





retirements. The 1992 audit was completed in July, prior to the budget being adopted on September 2, 1992. This audit included several legislative recommendations to improve the system and discourage fraudulent industrial disability retirements; however, none of the recommendations were adopted by the Legislature.

On March 1, 1996, Commissioner D. O. Helmick received a request from State Senator Quentin Kopp to provide specific information and testimony at a budget subcommittee informational hearing on workers' compensation (Annex D). Commissioner Helmick was asked to provide a status report on actions taken since the 1992/93 Budget and what actions, if any, would be necessary to address any rising costs related to workers' compensation and employee disabilities. Senator Kopp's request to Commissioner Helmick indicated that in 1993, the Department submitted a report addressing the specified concerns; however, no historical records could be located to indicate if the 1992 audit was provided to Senator Kopp, or if a separate report was provided.

On March 14, 1996, Commissioner Helmick testified at a budget subcommittee hearing called by Senator Kopp concerning workers' compensation costs. At this hearing, Commissioner Helmick provided written information and discussed the fiscal impact that CHP industrial disability retirements were having on California taxpayers and the Department. He further discussed the implementation status of the recommendations made in the 1992 audit. He included a listing of four legislative recommendations that were also identified in the 1992 workers' compensation audit (Annex D). The four recommendations were:

1. Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury.

**Outcome: No legislative changes were or have been made to this Labor Code Section to date to address this recommendation.**

2. Modify the medical evaluation process to be patterned after the arbitration procedure currently being used to resolve employee/employer relation disputes.

**Outcome: Senate Bill 899, signed into law April 19, 2004, made major changes to the process of obtaining medical evaluations to resolve disputed medical issues.**

3. Amend Labor Code Section 3202 requiring WCAB judges to interpret workers' compensation laws "equitably" rather than the current language of "liberally and in favor of the employee."

**Outcome: No legislative changes were or have been made to this Labor Code Section to date to address this recommendation, although changes made to the workers' compensation law at the beginning of 2004 regarding the burden of proof may provide some relief in this area.**

4. Establish an earnings offset for retirees employed outside CalPERS by restricting combined earnings (disability retirement plus outside earnings) to not more than the employee's salary level upon retirement. (Similar to Government Code Section 21300.) Note: Government Code Section 21300 was re-numbered to Section 21432 in 1995 without amending the content of the statute.

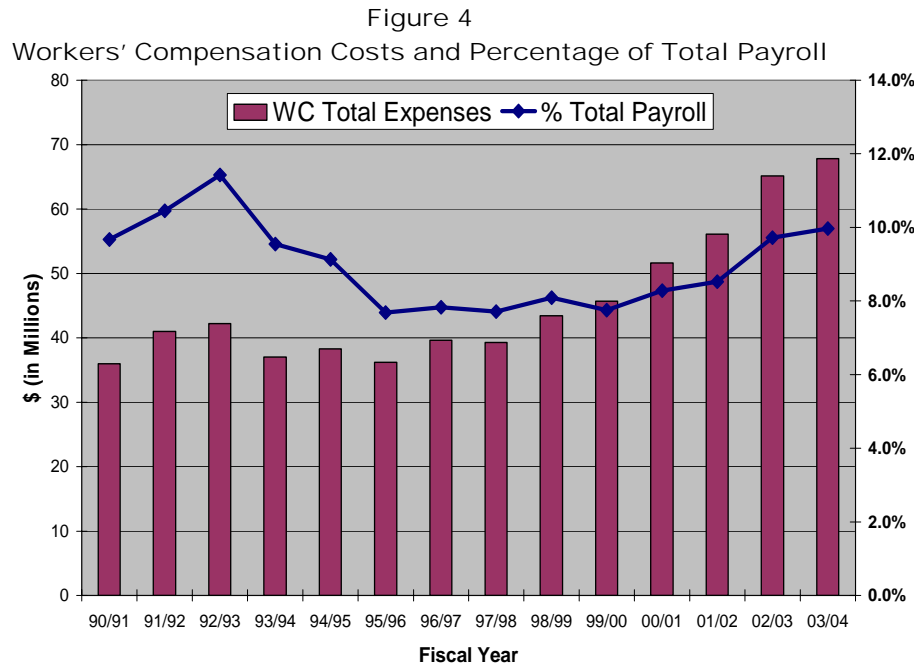
**Outcome: No legislative changes were or have been made to date to address this recommendation.**

There are no historical records to indicate legislation was ever introduced as a result of the audit. A search of legislation shows that several bills were introduced since 1993 that would have addressed some of these recommendations, but most died in committee without any hearings.

In January of 1997, the Department provided a report to the Joint Legislative Budget Committee with an update on the Department's overall workers' compensation costs and specific increases in costs paid to SCIF for workers' compensation services. Additionally, the Department sought approval for a legislative proposal to allow the CHP to develop and administer a pilot program to contract either with private adjusting companies, agents, or SCIF, for the adjustment of the Department's workers' compensation claims. This proposal was discussed with legislators but it never moved forward.

## Current Costs and Trends

The reduction in workers' compensation costs brought about, in part, by the Department's earlier workers' compensation fraud unit was followed by an even greater rise in departmental costs for injury claims since the fraud unit was disbanded. The CHP has experienced significant increases in its total workers' compensation costs over the past several years. In Fiscal Year 1995/96, the CHP paid a total of \$36,222,283 (or 7.68 percent of its total payroll) in workers' compensation costs. In 2003/04, the CHP's workers' compensation costs increased to a total of \$67,804,243, or 9.97 percent of its total payroll (see Figure 4). The rise in costs can be attributed to, in large part, skyrocketing medical costs, inflation, SCIF case management fees, litigation, and an expansion of the types of injuries that are considered "presumptive."<sup>5</sup>



Source: Department of Personnel Administration.

<sup>5</sup> It is important to note that the death benefits employees' dependents receive can also be a significant contributor to the CHP's total annual workers' compensation costs. While death benefits are difficult to quantify at any given point in time, the Department will attempt to identify these costs in the near future.

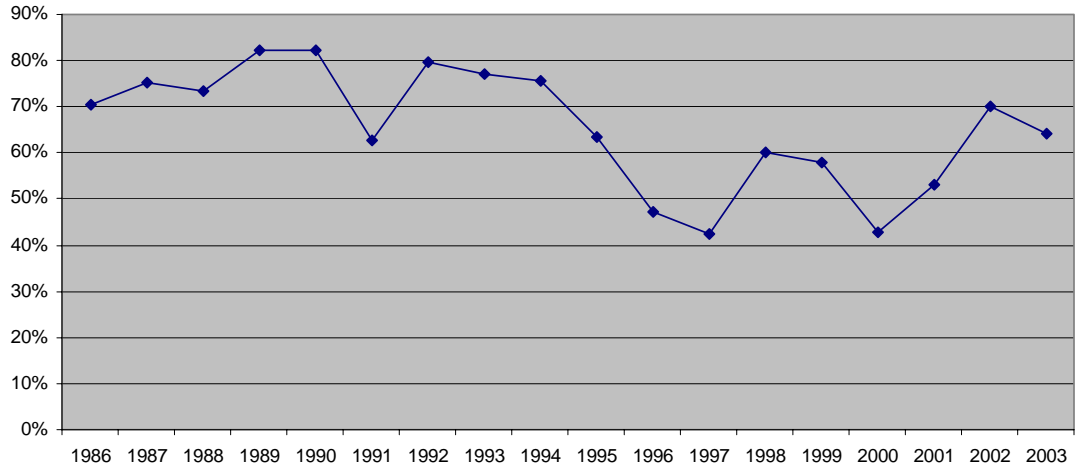
The driving force behind these increased costs, and for most employers in the state as well, is rising medical costs. During the period between fiscal years 1995/96 and 2003/04, the CHP's medical costs increased by more than 117 percent, from \$13,717,556 to \$29,795,760 per year (Annex E). In contrast, the CHP's expenditure for "4800.5" time decreased from a total of \$10,563,000 (25.68 percent of total workers' compensation costs) in Fiscal Year 1991/92, to a total of \$9,277,666 (13.68 percent of total workers' compensation costs) in Fiscal Year 2003/04. In part, this decrease can be attributed to the CHP's efforts to return injured employees to limited or full duty assignments as soon as medically feasible.

These trends also follow those of other state agencies and private insurers. In an effort to curb system-wide workers' compensation costs, the Governor and the Legislature have made system reform a priority. Recent legislation has brought significant reforms into law. The majority of these new laws, however, have only been in place since January 1, 2004. Recent information provided by DPA and SCIF show that these laws have already helped reduce the amount of medical payments. They report that state departments should see a further reduction in medical payments for fiscal year 2003/04, and a possible reduction in fiscal year 2004/05 as well.

Similar to workers' compensation costs in general, the number of IDRs have taken a dramatic turn. During the period of 1986 through 2003, as a percentage of total safety employee retirements (uniformed members and public safety dispatchers), 63 percent were due to industrial disability. (*Revised February 2005.*)

In 1996, IDRs (as a percentage of total uniformed retirements) stood at 47 percent. In 2002, that number rose to 70 percent. The percentage dropped in 2003 to 64 percent (see Figure 5). (*Revised February 2005*)

Figure 5 (*Revised February 2005.*)  
Percentage IDR of Total Retirements



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Total Retirements	172	145	191	174	136	190	162	211	160	196	237	196	168	124	373	265	201	128
IDRs	121	109	140	143	112	119	129	163	121	124	112	83	101	72	159	141	141	82
Other	51	35	51	31	24	71	33	48	39	72	125	113	67	52	214	124	60	46
IDRs as percentage of Total Retirements	70%	75%	73%	82%	82%	63%	80%	77%	76%	63%	47%	42%	60%	58%	43%	53%	70%	64%

Sources: *Workers' Compensation/Disability Retirement Program Audit (1992)* and the Health and Safety System (HSS) database.

## Methodology

On September 18, 2004, a workers' compensation fraud audit task force was formed which was comprised of select members of the Department's Internal Affairs Section (IAS) and other departmental investigators with prior workers' compensation fraud experience. The objective of this task force was to evaluate all cases from January 1, 2000, through June 30, 2004, in which an IDR was granted to a public safety member (uniformed members and public safety dispatchers) of this Department, or which was pending. *(Revised February 2005.)*

In addition to IDR cases, a review of our internal policies and procedures was implemented to ensure compliance with pertinent state laws and regulations. In addition, an analysis of a sample of injury claims was done to determine if our own internal policies and procedures are being followed.

### ***Fraud Task Force***

The task force first determined the exact number of cases that fit given criteria designed to gauge the need for further investigative action. The Department's Disability and Retirement Section, in conjunction with the Occupational Safety Unit, maintains a database that contains basic data on all employee injuries, including those that result in an IDR. The information in the database, combined with additional data obtained from the California Public Employee Retirement System (CalPERS), produced 603 cases for review by the task force.

The information in the departmental database, while somewhat useful in providing statistical information on workers' compensation claims within the Department, was often incomplete. Additionally, the database was never intended

or designed to be a tool for identifying workers' compensation fraud indicators. It was, therefore, readily apparent that additional analytical tools would need to be developed. Therefore, a new database was designed and built that was better suited to categorize and track cases with potential fraud indicators.

Each case was reviewed in detail with information and documentation immediately available to the task force. The Department is not the custodian of record for the bulk of the IDR record files since they are maintained by SCIF or CalPERS.<sup>6</sup> As such, if the Department did not possess a needed item of documentation, the appropriate SCIF office<sup>7</sup> was contacted and the requisite information was obtained. The task force was, therefore, able to ensure that each and every case was scrutinized to the extent necessary to make a definitive determination.

To facilitate the evaluation of these cases with the available data, a list of discrete potential fraud indicators was developed that could be quickly applied to each case by an analyst. These indicators mirrored those used by the previous Workers' Compensation Fraud Unit. If a particular employee's case met the determined criteria, it was flagged for additional review. This allowed for the limited investigative resources to be expended on the most egregious cases.

The sorting criteria were established by the task force which had extensive experience with workers' compensation and internal investigations. Three categories were established that allowed each case to be evaluated by a standardized and consistent set of factors that have historically been indicators of potential fraud. The categories are as follows:

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<sup>6</sup> Due to privacy concerns and potential for litigation, CalPERS has so far been reluctant to make available their files for departmental investigator review.

<sup>7</sup> SCIF maintains six geographically dispersed field offices throughout the state which maintain the physical files for the region.



- Category I: Employees facing disciplinary action at the time of the IDR; multiple claims filed within a 30-day period; the mechanism of injury was inconsistent with the claimed severity; relation of injury to job is unclear; there are discrepancies in how employee filed claim; or, the claim marked “Questionable” by employee’s commander.  
(Note: “presumptive injuries” were not excluded from this category if other indicators of possible abuse were present.)
- Category II: No witnesses to the injury; the injury was reported late or the reporting employee was 48 years old or older; cumulative injuries, the employee’s assignment, and the type of injury were inconsistent; details of the injury as provided by the employee were vague or unverifiable; or, there appear to be violations of HPM 10.7 procedures for handling claims.
- Category III: The injury was presumptive (except back injuries) or the injury was obviously valid (severe head injury, missing extremity, death, etc.).

A case meeting the Category I criteria automatically triggered a further review, as did cases that met two or more of the Category II criteria. Cases meeting the Category III criteria were deemed to require no further review.

A sample of the Case Evaluation Form is included in Annex F. A table of the raw data gathered during the analysis phase of the review is contained in Annex G.

Once a case had been identified as Category I, or had two or more Category II factors, an experienced workers’ compensation investigator was



assigned to more thoroughly examine the available documentation. This typically involved contacting SCIF and/or CalPERS to gather additional information. In most instances, the information gleaned from these sources revealed that no fraud was actually present. All cases that were deemed sufficiently suspicious were flagged for full investigation by the Department or were forwarded to CalPERS for their consideration.

## ***Policy and Procedure Review***

In addition to reviewing all the IDRs occurring since January 1, 2000, a separate review of a representative sample of workers' compensation claims on file in August 2003 was conducted. This was done to assess whether or not departmental practices comply with pertinent requirements. Out of a total of 234 claims filed, 100 cases were reviewed. The 100 cases were chosen simply by taking every other case listed on the Health and Safety System's August 2003 printout until a total of 100 cases was selected. Each CHP Division was represented among the selected cases.

Next, the CHP 121 and SCIF 3301 forms (Employee Claim for Workers' Compensation) for each claim were "pulled" from the appropriate employee's personnel folder, via the departmental Maestro system.<sup>8</sup> Lastly, in reviewing the claim population, seven cases were found to involve a loss of time in excess of 30 days. This loss of time means the command must fill out a CHP 121D form. A request was made to the appropriate command and Division offices for copies of the completed CHP 121Ds in order to confirm compliance with the policy

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<sup>8</sup> "Maestro" is the Department's electronically imaged document retention system. Maestro is currently used for the permanent storage of employee personnel records. Injury and illness case records are additionally housed in the Maestro system. Although SCIF is the official custodian of records for the Department's workers' compensation claims files, the Department does maintain a permanent record of injury forms created by departmental personnel. These documents include, but are not limited to, the CHP 121 series and the employee claim form.

requirement. All documents were reviewed utilizing a checklist that was developed specifically for this purpose (Annex H).

## Findings

### Task Force Findings

The task force's findings cover several areas, including: an overview of IDRs by rank and other demographic criteria; identified cases that will be forwarded to CalPERS for additional review; identified cases that will be reopened and investigated by the Department; and a large quantity of statistical data to give an overall perspective of the current workers' compensation situation within the Department.

Referring to Figure 6, a comparison is made between the percentages of service and IDRs received within each rank. The chart demonstrates that the percentage of assistant chiefs who receive an IDR versus a service retirement is approximately 20 percent higher than for officers. Deputy chiefs have similar, albeit slightly lower, numbers.

Figure 6 (Revised February 2005.)  
Comparison of Retirement Type Within Each Rank

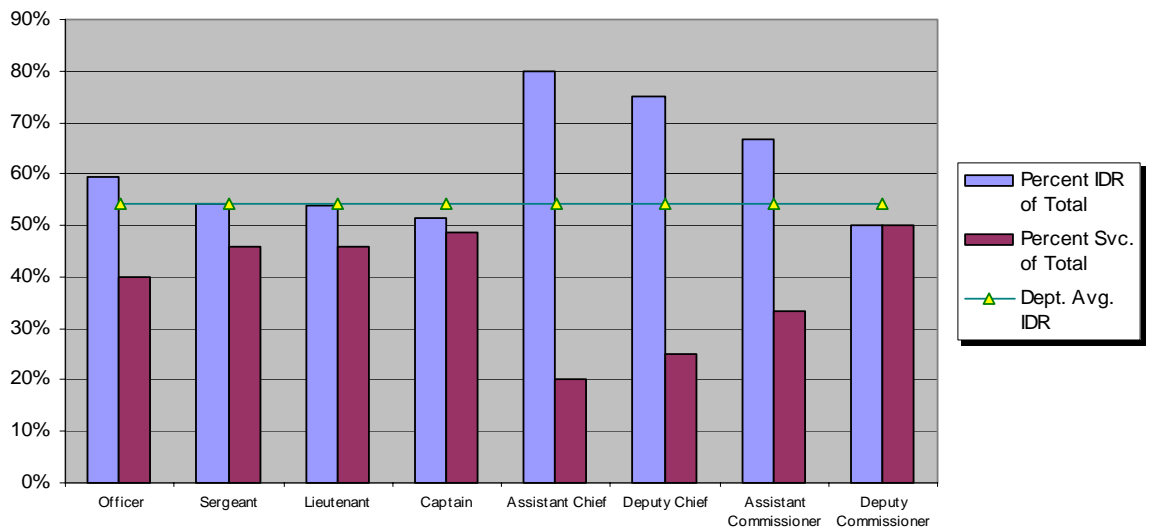


Figure 6 (Continued)

(All Retirement Categories)	Total Retirees	Avg. Age at Separation	Avg. Years of Svc.
Assistant Chief	20	56.08	30.95
Assistant Commissioner	3	57.97	33.2
Deputy Chief	20	56.96	33.01
Deputy Commissioner	2	59.13	33.38
Captain	33	56.39	31.41
Lieutenant	63	55.68	27.48
Sergeant	186	55.11	27.76
Officer	602	52.74	25.23

(IDRs)			
Assistant Chief	16	55.94	32.05
Assistant Commissioner	2	58.45	33.1
Deputy Chief	15	57.24	32.93
Deputy Commissioner	1	58.62	33.38
Captain	17	56.8	32.47
Lieutenant	34	56.41	30.19
Sergeant	101	54.74	28.2
Officer	357	51.23	23.64

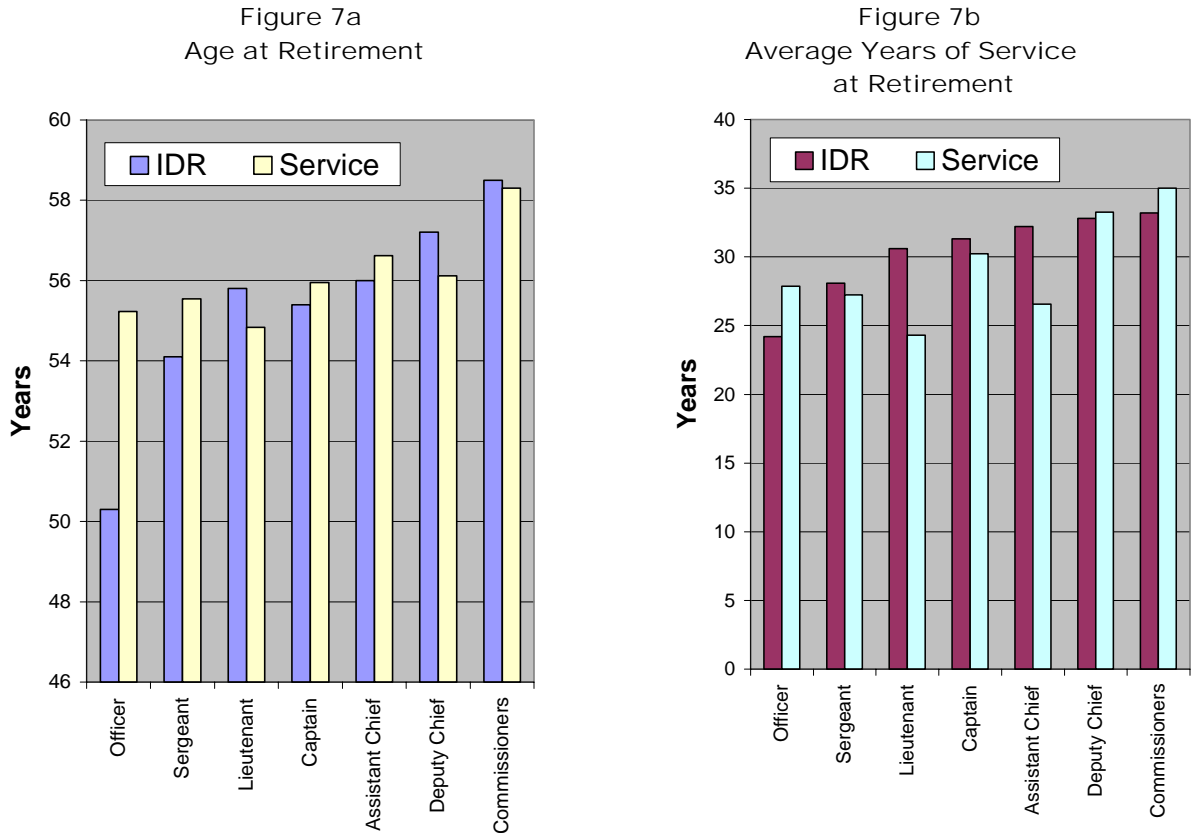
(Service Retirements)			
Assistant Chief	4	56.62	26.56
Assistant Commissioner	1	57.03	33.41
Deputy Chief	5	56.12	33.25
Deputy Commissioner	1	59.64	-
Captain	16	55.95	30.22
Lieutenant	29	54.83	24.31
Sergeant	85	55.54	27.23
Officer	240	55.23	27.85

	Percent IDR of Total	Percent Svc. of Total	Dept. Avg. IDR
Officer	59%	40%	54.1%
Sergeant	54%	46%	54.1%
Lieutenant	54%	46%	54.1%
Captain	52%	48%	54.1%
Assistant Chief	80%	20%	54.1%
Deputy Chief	75%	25%	54.1%
Assistant Commissioner	67%	33%	54.1%
Deputy Commissioner	50%	50%	54.1%

Source: HSS database. Covers all uniformed personnel during the period 1/1/00 through 6/30/04.

Figures 7a and 7b, however, demonstrate that senior ranking personnel receiving an IDR also tend to be older and have been serving more years than their lower ranking counterparts, often by significant amounts. For instance, deputy chiefs receiving an IDR were, on average, just over 57 years old, while officers were more than six years younger (Figure 7a). Similarly, on average, deputy chiefs receiving an IDR had almost 33 years of service while officers had just over 24 years (Figure 7b). In general, this pattern of higher ranking personnel

being older and having served longer when an IDR is granted can be seen throughout the rank structure.



Source: HSS and Taskforce databases. Covers all uniformed personnel during the period 1/1/00 through 6/30/04.

Figures 8a and 8b show trends in average age and years of service at time of retirement (both service and IDRs) over the previous decade. In general, average age and years of service for those receiving a service retirement have remained relatively constant, while the same figures for those receiving an IDR have actually trended upwards.

Figure 8a  
Average Age at Retirement

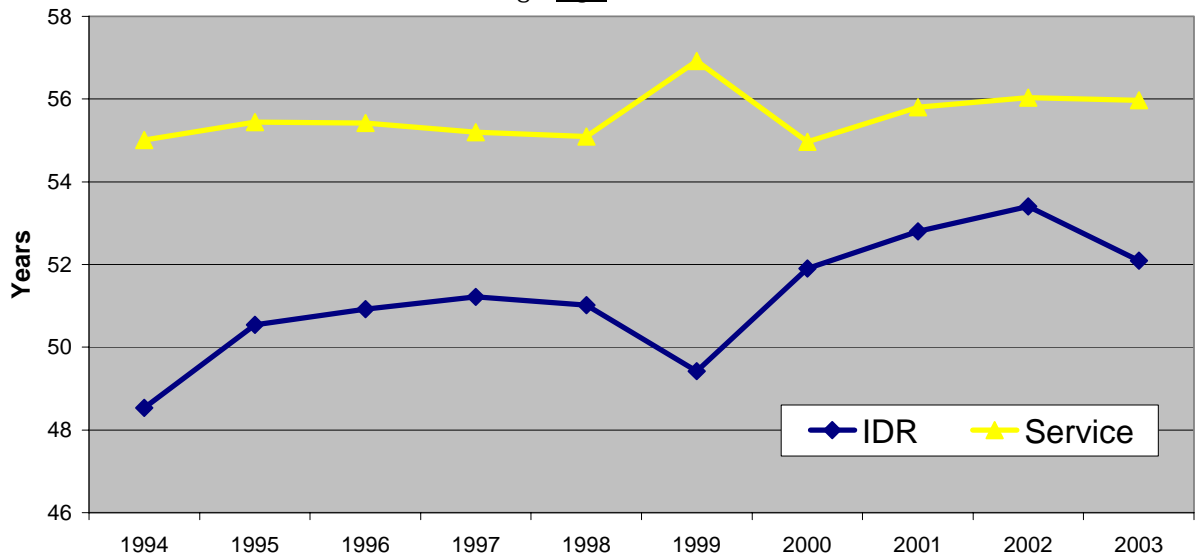
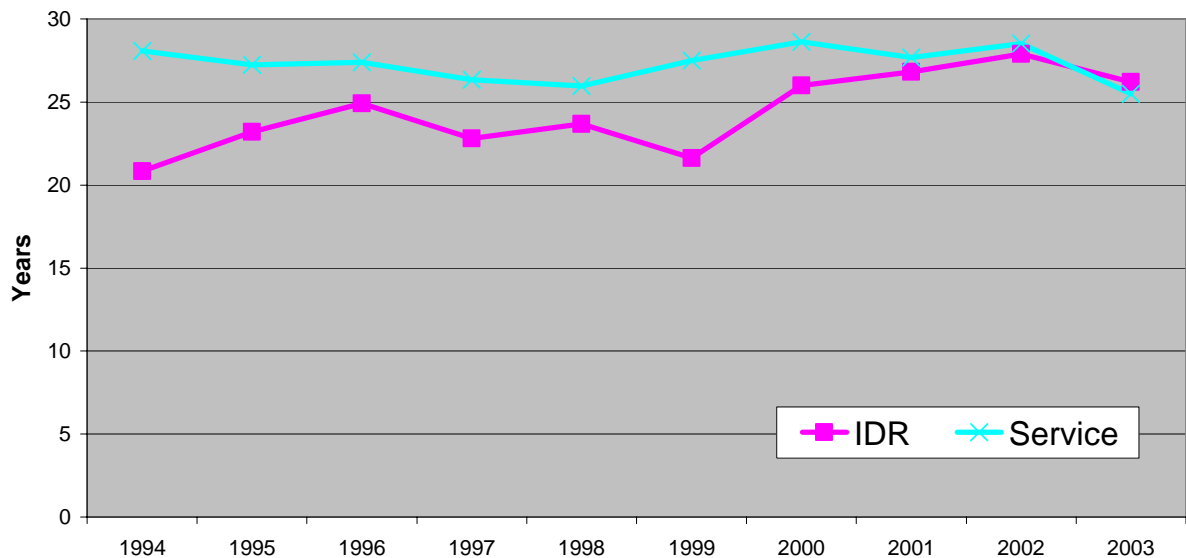


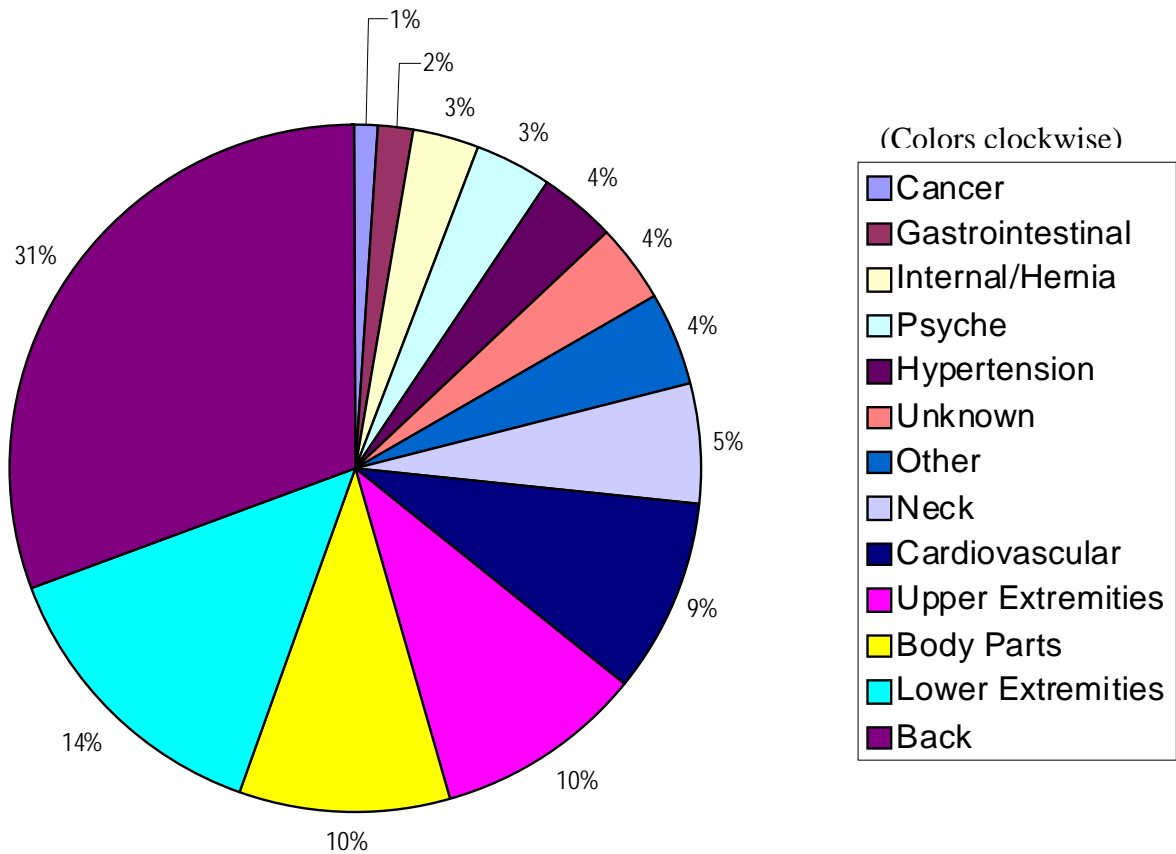
Figure 8b  
Average Years of Service at Retirement



Sources for both figures 8a and 8b: HSS and Taskforce databases

Figure 9 details the actual injuries which have precipitated the IDR claim. The chart specifies the type of injury, grouped by major subcategory, on which the IDR was based for all uniformed personnel. An additional analysis of the injury data by each rank and by gender did not indicate any significant differential between the types of injuries being claimed by any of these discrete groups and so is not included.

Figure 9  
Industrial Disability Retirement Causing Injury



Source: Taskforce database. Covers all uniformed personnel during the period 1/1/00 through 6/30/04.

A total of 35 cases have been identified as requiring further inquiry. Of these, 15 cases have indicators of potential abuse and are being investigated further, which could result in the Department seeking criminal prosecution.

The remaining 20 cases are being forwarded to CalPERS, accompanied by the analysis of each case detailing what fraud indicators were uncovered. The transfer was necessary because, as mentioned previously, CalPERS has been reluctant to permit departmental investigators to examine case files. The Department continues to work with CalPERS to resolve these legal and privacy issues and is hopeful that a satisfactory solution can be reached. It should be noted, however, that the financial incentive for CalPERS to re-examine many of these cases is minimal since the employee in question is entitled to a retirement



benefit whether it is by means of an IDR or not. The IDR incentive is the income tax incentives provided under current law.

The audit task force attempted to gather comparative data from other large law enforcement agencies; however, the data were not readily available. The Department will continue to try and collect this information for future analysis and comparisons.

### ***Workers' Compensation Policy, Procedures, and Claim Review***

After the review of workers' compensation claims was completed, an analysis of the data provided the following results:

- Commands provided injured employees with the SCIF 3301 (Employee's Claim for Workers' Compensation Benefits) in a timely manner 80 percent of the time.
- Commands completed the CHP 121 (Employer's Report of Occupational Injury or Illness) in a timely manner 76 percent of the time.
- Commands submitted the completed CHP 121 to SCIF in a timely manner only 36 percent of the time.
- Commands determined that 12 of the reported injuries were "questionable" in nature, meaning the injury could not be verified. Commands provided an appropriate level of documentation to support their questionable finding in 7 of the 12 claims. One of these 7 claims had a separate narrative attached to completely document their finding. Five claims did not contain an appropriate level of documentation.
- Commands appropriately investigated the injury (in an attempt to determine if the employee could have prevented the injury) and made a determination in 93 percent of the cases.

- Commands appropriately met with the injured employee and discussed the preventability finding 88 percent of the time.
- Based upon this review, it was determined that the CHP 121D (Injury/Illness Status Report) should have been completed in 29 instances. A review of the CHP 121Ds determined that the forms were completed 90 percent of the time. Additionally, it was observed that negative reports were typically also included in the divisional summaries. This points out that although commands are processing the CHP 121D, there are very few commands that should have no case management activity.
- There were some instances of non-compliance due to recent budget and travel restrictions. For example, due to restrictions on training, the most recently hired disability coordinator has not yet received the required training.
- There is an additional area of potential non-compliance concerning the requirement of departmental resources to return telephone calls to SCIF by close of business the next day. A SCIF assistant claims manager noted that, according to her adjusters, most telephone calls from commands throughout the state are generally returned on time.

## Commissioner's Action Plan

The findings from both the review of the 603 IDR cases and the 100 workers' compensation claims raise management issues discussed in this report that will require further review and action. While there is no question that there are issues within the workers' compensation and IDR systems as a whole that contribute to the problems associated with these systems, it is also clear that better case management and accountability from within CHP is needed.

The review of workers' compensation claims and IDR cases has yielded a list of problem areas that need to be addressed, both by the CHP directly and by others involved with these issues. The *problem areas* identified through the review process include:

1. Acceptance of Abuse. There appears to be an attitude of acceptance among some retirees and their superiors about abuse of the workers' compensation system. Some retirees may have trepidation about pursuing a work-related injury claim and IDR but ultimately decide that, since many others have taken advantage of the system, they should too.
2. Records. The CHP's Health and Safety System database is difficult to use for purposes of gathering information about workers' compensation claims and retirees. Workers' compensation and IDR records in Maestro contain inadequate information about claims and retirees. Accordingly, we were unable to rely on these records for meaningful information about several IDR retirees.
3. Coordination between CHP and SCIF/CalPERS. The records reviewed revealed a lack of communication regarding case status between CHP personnel and SCIF and/or CalPERS as claims worked their way through



the system. Follow-up directly with SCIF personnel for additional information was necessary for several cases.

4. Policy Violations. It was discovered that policy contained in HPM 10.7, is often not adhered to by supervisors and managers. The most prevalent violations were a failure by superiors to sign CHP 121s, failure to indicate questionable claims, and a lack of SCIF 3301s.
5. Case Management. The evaluation revealed instances of poor case management at the local command level and in other aspects of the process. These include a failure of supervisors to attend medical appointments, lack of follow-up by commanders regarding changes in case status, failure to encourage the employee to return to work, and failure of supervisors to identify indicators of fraud.

Staffing is also an issue, especially at the headquarters level, that affects adequate case management. The volume of workers' compensation claims filed and the number of DRS staff available to handle that volume are often at odds. This contributes to the opportunity for inaccuracies in processing and incomplete records management.

6. Training. The violations of policy and poor case management revealed that supervisors and managers lacked initial and/or annual refresher training in case management, fraud indicators, and departmental policy.
7. Workers' Compensation Fraud Unit. The Department has not had a workers' compensation fraud unit since the mid-1990s. This has apparently resulted in an increase in questionable workers' compensation claims and IDRs.

Those problem areas that are directly related to CHP policies, procedures, and organizational culture are completely unacceptable. To correct this, steps have already been implemented, which are listed below. Also, those involved



with these issues have offered recommendations that apply both directly to the CHP and to the workers' compensation and IDR systems as a whole (which would have to be addressed by the Administration, Legislature, and other stakeholders).

### ***Actions Already Taken***

- We have reinstituted the Workers' Compensation Fraud Unit, nearly tripling its previous staffing level of four investigators, which will report directly to the Commissioner's Office. All CHP 121s will be forwarded to this unit for review and subsequent aggressive investigation whenever indicators of possible fraud exist. The unit, comprised of an assistant chief, a lieutenant, eight sergeants, and one officer, will work closely with DRS, SCIF, CalPERS, and local district attorneys to improve anti-fraud policies, procedures, and training, and will prepare cases for prosecution.
- We have placed a renewed emphasis on making injury and illness case management a command "top" priority. To help accomplish this, staff from the CHP's DRS will provide training to managers and supervisors responsible for case management.
- We have realigned the role of DRS. Over recent years, the DRS role has changed from a liaison between the Department, SCIF, and CalPERS to also one of an employee advocate. With the recent workers' compensation laws, DRS can now become more of an advocate to protect the fiscal integrity of the CHP, while still ensuring that appropriate benefits are provided to our employees.
- The Workers' Compensation Fraud Unit, in conjunction with DRS, have been directed to develop procedures to review and track mandatory reinstatement requests for indicators of fraud.



- The Department has begun an audit to assess the current accuracy of SCIF's billing process.
- Workers' compensation case management strategies will be included in the CHP's 2005 Strategic Plan.
- DRS personnel will attend Division Area Commanders Conferences in 2005 to present information on significant workers' compensation cases.
- The Department will be visiting other agencies (Los Angeles Police Department, for example) to explore a wide range of solutions used to tackle their workers' compensation and disability retirement problems.  
(Revised February 2005.)

### ***Recommended Actions***

There are a number of recommendations which could serve to prevent and manage employee injuries, while reducing associated costs. In order to implement long-term solutions and modifications to the complex workers' compensation program, logistical assessments must be a consideration prior to moving forward. The Department, in the months ahead, will continue to implement and evaluate the following internal recommendations, taking into consideration issues such as Memoranda of Understanding, bargaining unit contracts, and critical public safety tasks. Also, in developing the following recommendations, the Department considered the efforts and recommendations contained in the recently released *California Performance Review*. These considerations are discussed further in Annex I.

## Internal CHP Actions

1. Limited Duty Assignments. The use of limited duty assignments (with an appropriate medical release) for specified employees pending IDR is being reviewed for possible expansion. Often employees file for IDR while on paid medical leave (4800.5 time). Bringing these employees back to work and placing them on limited duty status would stop their entitlement to 4800.5 benefits, thereby reducing departmental costs for tax free disability payments. Then, once the employee's IDR is approved by CalPERS, the employee could be separated from the organization, bringing about additional savings to the Department in reduced 4800.5 benefit costs. We would also explore and implement a policy to articulate which assignments employees on limited duty could perform.
2. Internal Approval Authority. The Department is evaluating its internal authority process for the settlement of workers' compensation claims. This lengthy internal process can cause problems with meeting the 10-business day approval requirement imposed by the State's Master Agreement.
3. Policy Compliance. Emphasis has begun, and will continue, for strict compliance and enforcement of departmental policies relative to completion of required injury documentation, and specifically the CHP 121D, Injury/Illness Status Report. Further, existing policy is being revised to require monthly reporting of injury status by commanders of their employees, inclusive of months when no employee is on injury status, otherwise known as "negative reports."
4. Consistent and Timely Division Review of Area Case Management Practices. The Commissioner's Office currently provides "Quarterly Reports of Open Workers' Claims" to each Division commander for their respective commands. The Department will now provide these reports on



a monthly basis to improve management review and follow up. Further, a standard Division review protocol is being developed to ensure that local commands use their report to actively review injury claims on a monthly basis. Finally, this new process will include a comparison between the CHP 121D and the new monthly report of open injury claims to ensure compliance with case management policies.

5. Legal Counsel Position. The Department will explore the feasibility of a budget change proposal seeking a legal counsel position, designated as an expert in, and solely dedicated to, departmental cases related to workers' compensation, retirement, recruitment, and equal opportunity. Such a position would provide immediate access to, and timely review of workers' compensation matters that may be outside the technical expertise of current DRS staff.
6. DRS Database. A modified DRS database must be developed to include additional statistical information about workers' compensation claims and IDRs. Such a database should be easily navigable and include information which could serve as indicators of potential fraud. The database recently developed by the workers' compensation audit task force will be used as a starting point in the development of this new database. Information contained in these files will also be accessible to field commands upon request.
7. Workers' Compensation Fraud Unit Database. A more expansive, confidential database should also be created for the exclusive use of the Workers' Compensation Fraud Unit. This database will be utilized to conduct trend analyses, and to track fraud investigation cases from initial investigation to prosecution and/or adverse action.



8. Policy. Policy will be developed to provide further guidance for processing of “questionable” injury claims. Specifically, a policy will be provided on handling of claims that appear to be fraudulent.
9. Tipline/Website. The Department will explore the feasibility of establishing a toll free workers’ compensation fraud reporting hotline for suspected criminal activity by workers’ compensation claimants and/or disability retirees. The website could be utilized by both departmental employees and the public.
10. 14 Critical Tasks. The Department will re-evaluate the 14 critical tasks (otherwise known as “performance measures”) required of all uniformed employees and make recommendations to the Commissioner as appropriate (see Annex J for a list of these tasks).
11. Self Administration. The Department will explore the feasibility of administering its own workers’ compensation claims, or replacing SCIF with a private insurer. Such an evaluation will explore means of reducing current multi-million dollar annual costs for open injury claims. This recommendation would follow an assessment of recently enacted workers’ compensation law. The threshold for this evaluation will be what is in the best interest of the state and taxpayers who fund workers’ compensation costs. If this proposal is adopted, additional in-house legal counsel would be required.
12. Occupational Safety. The Department will task its Occupational Safety Committee to explore and recommend new workplace safety programs with a goal of substantially reducing injuries to employees and reducing associated costs.
- 13.

Departmental Awareness Campaign. An in-house awareness campaign will be developed which emphasizes integrity and honesty relative to injury and workers' compensation claims. Awareness tools will include a means to express departmental values and expectations of employees with respect to this subject, the positive aspects of service retirement, the importance of proper case management, training of all employees, and wide dissemination of any departmental employee fraud cases.

14. Reclassifying Injured Employees. The Department is exploring the feasibility of reclassifying the duty position of permanently injured uniformed employees, with the intent of returning the employee to duty in a vacant non-peace officer role.
15. Special Handling of Retirements. The Department is developing policy to make clear that an employee's retirement eligibility shall not be considered when an adverse action, or separation due to injury, is being considered by the Department.
16. Amendments to HPM 10.2, *Internal Investigations*. Under the Peace Officers' Bill of Rights, the Department generally has one year to take final administrative action against a uniformed employee for acts of misconduct. The Government Code provides specified exceptions to this one-year period for complex investigations, workers' compensation fraud, and other criminal cases. For example, it extends the period to take adverse action against an employee to within three years of learning of the misconduct. The practical effect of the time limit is that the Department will likely be precluded from taking adverse action against an employee who retires before adverse action is taken, then reinstates several years later after the statute of limitations passes relative to "final administrative action." Although this happens infrequently, it nevertheless is a loophole in the system.

The Department's Internal Affairs Section will address the issue described above by developing policy to allow the retention of internal investigations in specific circumstances for longer than the standard five year retention period currently allowed. The period of retention should be commensurate with the employee's eligibility to return to state service and would be approved by the Office of the Commissioner. (*Revised February 2005.*)

### **Actions External to CHP**

Although the following recommendations appear beneficial, they are beyond the Department's purview and may require legislative amendments in order to enact the strategies which would reduce the cost associated with workers' compensation claims.

1. Amend Labor Code 4658.6. Amend Labor Code Section 4658.6 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability. (This recommendation is specific to CHP IDRs and was part of the CHP's recommended legislative changes in March 1996.) (*Revised February 2005.*)
2. Earnings Offset. Establish an earnings offset for IDR retirees employed outside CalPERS in an occupation requiring peace officer status, by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement (similar to Government Code Section 21300). (This recommendation is specific to the CHP and was part of the CHP's recommended legislative changes in March 1996.)



3. Presumptive Injuries. There must be a review of Labor Code Sections 3212 through 3213 to determine if the current list of presumptive injuries is tied to specific job-related injuries. An employee should not, for example, automatically qualify for a “presumption based” IDR if the medical review determines that the particular injury was unrelated to the employee’s specific job duties. (This recommendation is specific to the CHP.)
4. Medical Evaluations. With respect to CalPERS, after an IDR is approved CalPERS has the responsibility to periodically review the current status of retirees. To accomplish this, CalPERS should periodically have independent medical evaluators re-evaluate, in a standardized format, the disability status of employees who are less than 50 years of age, which is the CHP’s eligibility age for service retirement. This could initially be done on a trial basis to determine if this process is beneficial in identifying disability retired employees whose medical status later improves to the point that they may be able to return to their CHP employment.
5. Amend Penal Code Section 1543(d): Penal Code Section 1543(d) should be amended to grant the CHP access to relevant medical records associated with workers’ compensation and disability retirement cases that both SCIF and CalPERS have access to. (*Revised February 2005.*)

## Conclusions

The recent media spotlight on workers' compensation costs and IDRs within the CHP specifically and as an issue for study by the administration and the Legislature may be well-deserved. Still, as the current costs and trends within this Department are evaluated, a persistent fact needs to be remembered: law enforcement is a dangerous business.

Since its inception in 1929, over 200 CHP officers have lost their lives in the performance of their duties. Thousands more have suffered injuries, many of which have been life-changing, career-ending incidents. Vehicle crashes, errant or impaired drivers, aiding collision victims, violent encounters with dangerous citizens, and many more scenarios all combine to raise the risk of injury or death for CHP officers and others in this line of work. There is a general acceptance of this increased risk by officers and citizens alike, and an implicit expectation that injuries and associated costs will be higher for this group than for those in less risky professions.

The rewards for this increased risk are many, from the more noble of enhancing the safety of the citizens we serve, to the more practical and personal of receiving compensation for injuries sustained. The system established to regulate the "compensation" aspect of rewards is a maze of bureaucracy involving many entities, including government agencies, insurance companies, medical professionals, and attorneys, in addition to the person suffering an injury. The system and programs were designed and implemented for a worthy purpose, yet, over time, they have become mired in cost overruns and suspicion of misuse and outright fraud.

We have taken an honest look at the numbers of industrial disability retirements; we have identified those that are worthy of more detailed review, including 15 cases that have indicators of potential abuse; we have identified



those that might be worthy of prosecution for fraud; and, we have established a permanent fraud investigations unit that will continue this initial phase of investigation and undertake a vigorous new investigative role for any new cases that may arise.

We have also looked at how we handle and process workers' compensation claims in general. Although policies and procedures are in place, which we expect all who manage these claims to follow, we found these procedures were frequently ignored. It told us that we need to renew our efforts at training and education throughout the entire Department, starting with commanders, Division chiefs, and supervisors.

Outside of the CHP, we know there are statutes and regulations that impact our ability to manage these cases effectively. We identified some of those concerns in earlier reports to the Legislature, but our recommendations were not adopted. With the Legislature's and the Administration's interest in these issues, we see an opportunity to raise our proposals once again and ignite a healthy debate on these topics.

We believe these proposals, along with the recommendations made earlier and the action steps we have already taken will do much to stem the rise in workers' compensation and disability retirement costs. The citizens of California have placed their trust in all who wear a CHP badge, an honor that is not taken lightly by any who wear our uniform. When that trust is shaken, even in the slightest, this Department as a whole will rise to reaffirm its commitment of honor, integrity, and service to the public. We stand ready to work with Administration, the Legislature, and others to ensure the safety of the public and our public safety employees, and to ensure that when necessary, they receive the full assistance of a fair and impartial benefit system.

